

R592. Insurance, Title and Escrow Commission. (Effective 6-25-09)
R592-8. Application Process for an Attorney Exemption for Title Agency Licensing.

R592-8-1. Authority.

This rule is promulgated by the Title and Escrow Commission pursuant to Section 31A-2-404 which authorizes the Commission to make rules for the administration of the provisions in this title related to title insurance and Section 31A-23a-204 which authorizes the Commission to make a rule to exempt attorneys with real estate experience from the three year licensing requirement to license a title agency.

R592-8-2. Purpose and Scope.

- (1) The purposes of this rule are:
 - (a) to delegate to the Commissioner preliminary approval or denial of a request for exemption;
 - (b) to provide a description of the types of real estate experience that could be used by an attorney seeking to qualify for the exemption;
 - (c) to provide a process to apply for a request for exemption; and
 - (d) to provide a process to appeal a denial of a request for exemption.
- (2) This rule applies to all attorneys seeking an exemption under the provisions of 31A-23a-204.

R592-8-3. Definitions.

In addition to the definitions of Sections 31A-1-301, 31A-2-402 and 31A-23a-102, the following definitions shall apply for the purposes of this rule:

- (1) "Attorney" means a person licensed and in good standing with the Utah State Bar.
- (2) "Real estate experience" includes:
 - (a) law firm transactional experience consisting of any or all of the following:
 - (i) real estate transactions, including drafting documents, reviewing and negotiating contracts of sale, including real estate purchase contracts (REPC), commercial transactions, residential transactions;
 - (ii) financing and securing construction and permanent financing;
 - (iii) title review, due diligence, consulting and negotiations with title companies, researching and drafting opinions of title, coordinating with title companies, pre-closing;
 - (iv) zoning, development, construction, homeowners associations, subdivisions, condominiums, planned unit developments;
 - (v) conducting closings; and
 - (vi) estate planning and probate-related transactions and conveyances.
 - (b) law firm litigation experience consisting of any or all of the following:
 - (i) foreclosures;
 - (A) judicial and non-judicial;

(B) homeowner association (HOA) lien foreclosure;

- (ii) either side of homeowner vs HOA litigation;
- (iii) state construction registry litigation - mechanics lien filing and litigation;
- (iv) real estate disputes or litigation involving:
 - (A) a real estate contract;
 - (B) a boundary line;
 - (C) a rights of way and/or easement;
 - (D) a zoning issue;
 - (E) a property tax issue;
 - (F) a title issue or claim;
 - (G) a landlord/tenant issue; and
 - (F) an estate and/or probate litigation involving real property assets, claims, and disputes.

(c) non-law firm experience consisting of any or all of the following:

- (i) real estate agent, broker, developer, investor;
- (ii) mortgage broker;
- (iii) general contractor;
- (iv) professor or instructor teaching real estate licensing, real estate contracts, or real estate law;
- (v) lender involved with any or all of the following real estate lending activities:
 - (A) lending;
 - (B) escrow; or
 - (C) foreclosure;
- (vi) private lender;
- (vii) in-house counsel involved in real estate transactions for bank, mortgage lender, credit union, title company, or title agency;
- (viii) employment with or counsel to a government agency involved in regulation of real estate, such as HUD, FHA, zoning, tax assessor, county recorder, insurance department, and Federal or state legislatures;
- (ix) escrow officer;
- (x) title searcher; or
- (xi) surveyor; and

(d) other experience with real estate not included in (a), (b), and (c) above.

R592-8-4. Delegation of Authority.

The Commission hereby grants its preliminary concurrence to the approval or denial of a request for exemption requested by an attorney pursuant to 31A-23a-204 to the Utah Insurance Commissioner.

R592-8-5. Request for Exemption Process.

(1) An individual title licensee, who is an attorney as defined in this rule desiring to obtain an agency license under the exemption provided in 31A-23A-204(1)(c), shall make a request for exemption to the Commissioner in accordance with the requirements of this subsection.

(2) The applicant will submit a letter addressed to the

Commission:

(a) requesting exemption from the licensing time period requirements in 31A-23a-204(1)(a)(i); and

(b) providing the following information:

(i) the applicant's name, mailing address and email, telephone number, and title license number;

(ii) a description of the applicant's real estate experience; and

(iii) why the applicant feels that experience qualifies the applicant for the exemption.

(3) The Commissioner will review the request for exemption within five business days of its receipt and

(a) request additional information from the applicant;

(b) preliminarily approve the request for exemption; or

(c) preliminarily disapprove the request for exemption.

(4) The Commissioner will report monthly to the Commission all preliminarily approved or denied requests for exemption received and reviewed since the previous Commission meeting.

(5) The Commission will concur or non-concur with the Commissioner's preliminary approval or denial of a request for exemption.

(6) If the Commissioner's preliminary denial of a request for exemption is concurred with by the Commission, the Commissioner will:

(a) notify the applicant of the denial; and

(b) inform the applicant of his right to agency review pursuant to R590-160.

(7) If the Commissioner's preliminary approval of a request for exemption is concurred with by the Commission, the Commissioner will expeditiously notify the applicant to submit an electronic license application and pay the required fees and assessments.

R592-8-6. Penalties.

A person found, after a hearing or other regulatory process, to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R592-8-7. Enforcement Date.

The Commission will begin enforcing this rule on the rule's effective date.

R592-8-8. Severability.

If any provision of this rule or the application of it to any person or circumstance is for any reason held to be invalid, the remaining provisions to other persons or circumstances shall not be affected.

KEY: attorney exemption application process

Date of Enactment or Last Substantive Amendment: June 25, 2009

Authorizing, and Implemented or Interpreted Law: 31A-1-301; 31A-2-308; 31A-2-402; 31A-2-404; 31A-23a-102; 31A-23a-204